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HUMAN RIGHTS COMMITTEE

Forty-third session

SUMMARY RECORD OF THE 1100th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 25 October 1991, at 10 a.m.

Chairman: Mr. POCAR

later: Mr. AGUILAR URBINA

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The meeting was called to order at 10.15 a.m.

STATEMENT BY THE UNDER-SECRETARY-GENERAL FOR HUMAN RIGHTS

1. Mr. MARTENSON (Under-Secretary-General for Human Rights) said that it was a great pleasure to be able to welcome the Committee to the Palais des Nations for its forty-third session and to have Mr. Herndl back as one of its members.

2. Before proceeding to his customary review of the latest developments and activities of special interest in the human rights field, he wished to report briefly on some relevant aspects of the recently published report by the Secretary-General on the work of the United Nations.

3. In that report, the Secretary-General had forcefully reaffirmed the close connection between human rights and peace and the importance of human rights for the development of the United Nations. The Secretary-General had stated that the shift in public attitudes and the growing international interest in universalizing a regime of human rights reflected a more focused awareness of one of the requirements of peace and that there was no doubt that the violation of human rights imperilled peace, human rights having become "one of the keystones in the arch of peace". While recognizing the persistence of a gulf between human rights aspirations and what he had termed "the barbaric realities of the world in which we live", the Secretary-General had cautioned against belittling the positive results that had already been achieved, including the development of procedures for examining and discussing human rights problems and violations by the Commission on Human Rights and the various treaty monitoring bodies. Much had already been done to lay the foundations of a universal culture of human rights, and the raised level of consciousness of human rights around the globe was due in no small measure to the thought and work that had been devoted to that cause by the United Nations and those who had taken inspiration from it.

4. The Secretary-General had also discussed at some length the question of the relationship between human rights and national sovereignty and had noted that the principle of non-interference with the essential domestic jurisdiction of States could no longer be regarded as a protective barrier behind which human rights could be massively or systematically violated with impunity.

5. The Committee undoubtedly shared his own deep sense of satisfaction over those emphatic reaffirmations by the Secretary-General of the vital role of human rights in international affairs and would take his comments as a source of encouragement for its future endeavours.

6. With regard to recent human rights-related developments, it was a great pleasure to be able to report that Albania, Estonia, Grenada and Israel had now acceded to the Covenant, bringing the total number of States parties to 99, and that Australia, Estonia, Ukraine and the Soviet Union had acceded to the Optional Protocol, bringing the total number of States parties to that instrument to 58. In addition, the Soviet Union and Zimbabwe had recognized

the competence of the Committee under article 41 and Norway had ratified the Second Optional Protocol aimed at the abolition of the death penalty. Moreover, on 8 August 1991 the President of the United States had transmitted the International Covenant on Civil and Political Rights to the United States Senate for its advice and consent to ratification.

7. The Preparatory Committee for the World Conference on Human Rights had held a very successful first session in Geneva during September. In his opening statement to that Committee in his capacity as Secretary-General of the World Conference, he had suggested that by mobilizing the energy and efforts of all human rights bodies, non-governmental organizations and individuals, the preparatory process should serve forcefully to reaffirm and safeguard the international standards established by the United Nations, including those set forth in the Covenant. Those high standards belonged to humanity's common heritage and had to be passed on, in strengthened form, to coming generations. The process should also serve to promote the universal application of those standards, ensuring that no individuals were excluded from the protections they provided. Lastly, he had suggested that the process should serve to enhance the effectiveness of national and international efforts aimed at the full implementation of such standards and should lead to actual improvements in the quality of life of people around the world.

8. The Preparatory Committee's session had been devoted largely to procedural matters. As its report indicated (A/CONF.157/PC/13), it had decided, inter alia, to propose to the General Assembly that the World Conference should be held in Berlin for a period of two weeks in 1993 and that the Preparatory Committee should hold three further sessions - two during 1992 and the third in 1993. The Committee had also suggested that the Secretary-General should be requested to prepare a limited number of short analytical studies and to prepare or update the main reference documents and publications. It had also reaffirmed that the chairmen of the treaty bodies or their designated representatives should take an active part in the work of the Preparatory Committee and the World Conference.

9. The preliminary comments and recommendations adopted by the Human Rights Committee in July had been brought to the attention of the Preparatory Committee and had been well received. The Committee had been most ably represented by its Chairman, Mr. Pocar, whose extremely valuable and interesting statement had been highly appreciated by delegations to the Preparatory Committee. Mr. Pocar would undoubtedly share some of his observations on the Preparatory Committee's first session with the Human Rights Committee in due course. Any additional comments that members might wish to contribute would certainly be received with great interest.

10. Turning to the activities of some of the other human rights treaty bodies, he said that the Committee on the Elimination of Racial Discrimination, at its fortieth session in August 1991, had decided to designate six of its members to be responsible for following developments relating to the work of the other human rights treaty bodies as well as the Commission on Human Rights, the Sub-Commission, and the European Parliament, and to keep the Committee appropriately informed. It had also proceeded, on the basis of reports that had already been considered at an earlier stage and

additional information that had become available in the interim, with a review of the implementation of the provisions of the Convention by 12 States parties whose reports had been long overdue. Although one of the States parties concerned had sent a representative to the Committee, the review of implementation in the other 11 countries had taken place in the absence of State party representatives.

11. The first session of the Committee on the Rights of the Child had been held in early October 1991. It had been able to complete action on a number of key organizational matters, including the adoption of its rules of procedure and the reporting guidelines for initial reports. It had also considered its future methods of work under the relevant provisions of the Convention and explored the role and potential contribution of the various cooperating agencies and organizations in that regard. The Committee on the Rights of the Child planned to hold its second session from 28 September to 9 October 1992 and had expressed the wish to hold at least two sessions per year in future, preceded by a pre-sessional working group. The Committee's interim report to the General Assembly, which included its reporting guidelines and which he believed the Human Rights Committee would find of very real interest, would be made available during the current session.

12. With regard to recent advisory services activities, the Centre had organized or helped to organize several workshops or training courses in recent weeks, receiving in that effort the welcome collaboration of some members of the Human Rights Committee. They had included a workshop on human rights instruments and reporting obligations at the end of August in Moscow, a national workshop for Supreme Court judges in September in Bucharest, and a meeting on national institutions for the promotion and protection of human rights at the beginning of October in Paris. The workshop in Moscow was of particular significance since it had been organized just a week after the attempted coup and had served as a timely demonstration of the international community's continuing interest in supporting efforts to promote the observance of human rights and fundamental freedoms in the Soviet Union. The meeting in Paris, which had involved some 80 participants including representatives of national human rights institutions, non-governmental organizations and intergovernmental organizations as well as ombudsmen and mediators, had provided an opportunity to stress once again the need for action on human rights at the national level, if respect for such rights was to have a real chance to take root in the political and legal culture of a country and to become a permanent feature of the local system.

13. The Centre was planning to hold a national training course on international standards in the field of human rights and national legislation in Ulan Bator, Mongolia, at the end of October. The Covenant was being translated into Mongolian with the aim of bringing about changes in the Constitution. Lastly, a workshop on regional human rights arrangements for Asian and Pacific countries was to be held in Jakarta in December.

14. In conclusion, wishing the Committee every success with its heavy schedule of work, he assured it of his full support and assistance, as well as that of his colleagues in the Secretariat.

15. The CHAIRMAN thanked Mr. Martenson for his statement and his readiness to assist the Committee in its activities. Mr. Martenson's report on international developments in matters relating to the Covenant and the Optional Protocol, as well as the World Conference and the procedural aspects of the activities of other treaty bodies, was of great interest to the Committee.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Austria (CCPR/C/51/Add.2) (continued)

16. The CHAIRMAN suggested that the question left in abeyance from section V of the list of issues on the compatibility of Austrian legislation with article 14 of the Covenant should be postponed for the moment in order to give the Committee time to discuss the procedural aspects involved in offering an interpretation to the Austrian Government with a view to the withdrawal of its reservations. He further suggested that the remaining parts of the list of issues might be divided into two, sections VI, VII and VIII being considered together, followed by section IX.

VI. Freedom of movement and expulsion of aliens (arts. 12 and 13)

Please provide additional information concerning the relevant judicial or administrative procedures for appeal against an order prohibiting residence. Does such an appeal have suspensive effect?

VII. Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred (arts. 18, 19 and 20)

(a) What are the modalities defined by law applicable to conscientious objectors who are exempted from military service and must perform alternative service? (See para. 13 of the report).

(b) Please indicate what practices are not considered consistent with public order or public morals. (See para. 198 of the report).

(c) How is the right to seek information envisaged in article 19 (2) of the Covenant guaranteed?

(d) Please explain whether the application of article 111 of the Austrian Criminal Code has given rise to any difficulties with regard to the implementation of article 19 of the Covenant. (See para. 187 of the report).

(e) Please describe what limits Austrian law puts to the right to seek and to impart information. Please expand the reply to cover also the right to peaceful assembly according to article 21, particularly with regard to assemblies aiming at imparting information.

VIII. Freedom of assembly and association (arts. 21 and 22)

(a) Have there been any cases of meetings broken up by the authorities during the period under review and, if so, for what reasons? (See para. 222 of the report).

(b) Please provide examples, if any, of prohibited formations or dissolutions of associations. (See paras. 228 and 231 of the report).

17. Mr. BERCHTOLD (Austria), replying to section VI, said that the substance of article 13 of the Covenant had been incorporated into the Seventh Protocol to the European Convention on Human Rights and consequently into Austria's constitutional law. Article 1 of that Protocol differed from the Covenant on the particular point at issue, namely, whether an appeal had suspensive effect; it stated in paragraph 2 that an alien might be expelled before the exercise of his rights under paragraph 1 (a), (b), and (c) of article 1 when such expulsion was necessary in the interests of public order or for reasons of national security. The reasoning behind that provision was that during the negotiation and consideration of the Seventh Protocol it had been agreed that there should in principle be a suspensive effect in cases of expulsion, that the individual concerned should have the right to submit reasons against his expulsion, to have his case reviewed and be represented, and that he could not be expelled before he had exercised those rights. However, some exceptions had been considered necessary in cases involving public order and for reasons of national security.

18. Referring to section VII of the list of issues and to the general question of freedoms he said that, as he understood it, a freedom was something which an individual had and could enjoy without interference by the State but whether or not and to what extent freedoms were exercised depended on individual initiative, ability and means. While it might be argued that there was an obligation on the part of the State to create a situation in which individuals could exercise such freedoms, that argument was dangerous because it implied a degree of interference by the State; the greater the level of the State's obligation the greater the degree of State interference and action which might run counter to human rights interests. It was therefore extremely difficult to say how far State obligations should go. In a recent case involving Austria, the European Court of Human Rights had held that freedom of assembly not only meant that a State should not interfere if people assembled in freedom but also that, where there was a counter-demonstration, the State was obliged to protect one assembly against the other so that the two could be held freely. In that particular case the Austrian authorities had been deemed to have fulfilled their obligations.

19. As far as question (a) was concerned, conscientious objectors had hitherto been subject to individual examination by a commission whose decision could be appealed before the Constitutional Court. It was now proposed to amend that system on two points. First of all, conscientious objectors would be believed from the outset, and would no longer be subjected to examination. However, to avoid any abuse of such rights, alternative service would be two months longer than military service.

20. Question (b) referred to an expression reproduced from the Treaty of St. Germain. He did not know exactly what the drafters of that Treaty had had in mind when referring to practices not inconsistent with public order or public morals, but in the context of freedom of religion at least there were certain obvious examples from the pact, such as human sacrifice.

21. Turning to question (c), while the freedom to seek information existed, as far as he knew there was no obligation to provide information, except in the case of the public authorities, which were required to give certain information on request. In principle, people were free to seek any information they wished: there was no restriction on the import of newspapers or books, for example, nor was there any jamming of radio or television broadcasts. It might therefore be said that complete freedom existed in that respect in Austria.

22. Referring to question (d) an answer to a question on the Lingens case had been given at a previous meeting. Difficulties had arisen in the past as a result of a certain interpretation of article 111 of the Criminal Code, but it was now thought that the criminal courts in Austria would in future apply that article in the light of the judgements rendered at Strasbourg in the Lingens and Oberschlick cases.

23. In reply to question (e), Austria was a free society in which individuals could seek information wherever they wished provided that no means contrary to the Penal Code, such as stealing were used, the same was true of imparting information. Quite clearly, however, it was more difficult to impart information than to seek it and that was largely a matter of the imagination and initiative of the individual. The State did not have any particular obligation to ensure that people could impart information.

24. Mr. Aguilar Urbina took the Chair.

25. Mr. SZYMANSKI (Austria), replying to the questions under section VIII, said that as far as question (a) was concerned, freedom of assembly was guaranteed in Austria in accordance with article 21 of the Covenant. Twenty-four hours' notice of a meeting had to be given to the magistrates, who could ban the meeting if they considered it was not in conformity with the law. Recent cases of meetings being broken up concerned the National Socialist Party which was forbidden to meet in Austria under the constitutional law.

26. Turning to question (b), he said that there, too, the freedom to form associations was guaranteed and it was very rare for any ban to be placed on their establishment. Recent cases had related to the creation of neo-Nazi groups and other unconstitutional formations.

27. Mr. PRADO VALLEJO said that an issue of concern to many people, particularly in the third world, was the anti-immigration policy or feeling among the public in a number of European countries against people seeking political asylum or against immigrants who had spent many years in the country. He requested information concerning Austria's policy on immigration and the granting of asylum, in which it had been known for its generosity in the past.

28. He had noted that no private individual or group could receive a licence to set up a television or radio station in Austria, and he asked whether that was deemed to be compatible with articles 18 and 19 of the Covenant, which guaranteed the right to freedom of expression. What was the Government's policy in that regard and did it intend to amend the legislation on the subject?

29. With respect to the removal of posters or leaflets during peaceful demonstrations, it had no doubt been claimed that such literature could lead to a breakdown in public order, but that was a highly subjective view, and he would welcome further information on the subject.

30. Mr. ANDO said that he would like to have some explanation of article 188 of the Criminal Code, reproduced in paragraph 196 of the report, which stated that whoever publicly discredited a person or object worshipped by a church or religious community recognized in Austria, or a belief, custom or institution recognized by law and connected with such church or religious community, or ridiculed such persons or objects, under circumstances in which his or her attitude was likely to cause justified disapproval, would be liable to a prison term of up to six months or a fine of up to 360 times the daily rate. The term "justified disapproval" could be given differing interpretations, and he would be interested to know how it was construed in Austrian legislation.

31. He had noted that private ownership of newspapers and magazines was allowed in Austria. With such private ownership, there could sometimes be a monopoly, and he would therefore be interested to know whether there was any policy in Austria against the monopolization of the mass media. He noted from paragraph 208 of the report that subsidies were granted to smaller newspapers that were of particular importance in shaping political opinion. He would welcome more information about the criteria and the procedure for granting such subsidies.

32. Virtually no information was given in the report as to the ownership and management of television and radio broadcasting establishments. Noting that such forms of mass media were becoming increasingly important, he wondered whether they were completely monopolized by the State and, if so, how the programmes were controlled and whether there was any prospect of privatization.

33. It was stated in paragraph 219 of the report that electoral meetings and discussions between electors and their elected deputies were exempt from the provisions of the Meetings Act provided that they took place at the time of the elections and not in the open air. He asked why open-air meetings were not allowed. He also wished to know why article 8 of the Meetings Act, referred to in paragraph 221, stated that aliens were not allowed to promote, organize or preside over any meeting for the discussion of public affairs.

34. Mrs. HIGGINS observed that the question of Government monopoly of television and radio stations was currently before the European Commission of Human Rights. Whether or not it was considered to constitute a violation of the Covenant would depend on the replies to the questions raised by Mr. Ando with respect to control and management, the way in which control was exercised and whether or not completely free speech was allowed. Even if the answer to

those questions was in the affirmative, a Government monopoly could lead to possible violation, and she therefore wished to know whether the issue was under consideration.

35. She associated herself with Mr. Ando's concern about the restriction against aliens in the conduct of meetings on public affairs. In that connection she mentioned Speakers' Corner in London, where people of all races and nationalities assembled and vigorous discussion frequently took place. The right to hold such meetings was an essential part of democracy which a State should be able to tolerate. She therefore wished to know why Austria considered that there was a need for their restriction.

36. With respect to article 188 of the Criminal Code, which provided for penalties in cases in which a belief, custom or institution was ridiculed or discredited, the case law of the European Court of Human Rights rightly provided that freedom of speech must include freedom to express ideas that were sometimes shocking and offensive. One permitted limitation to article 19 of the Covenant referred to respect of the rights or reputations of others, but there appeared to be no provision for the right not to be offended, and she therefore wished to know what legal basis was deemed to exist in the Covenant for article 188 of the Criminal Code. It appeared at first sight from the terms of that article that anyone in a similar position to that of Salman Rushdie would be more likely to be imprisoned by the police than protected by them.

37. She had been very interested by the Austrian delegation's explanation concerning the proper understanding of the Lingens and Oberschlick cases and the fact that judges had been instructed with respect to the interpretation of article 111 of the Criminal Code. If everything related to article 111 of the Criminal Code was dealt with on the basis of interpretation, there would be endless reference to the European Court or, in the case of the Optional Protocol, to the Committee. Article 111 itself appeared problematical. It went further in terms of restrictions than what was usually found necessary to protect the reputation of people in public life, and its terms were far closer to those of the former Marxist Constitutions than those in Western Europe. Why could not article 111 simply be amended?

38. Mr. MAVROMMATIS associated himself with the comments of Mr. Prado Vallejo, Mr. Ando and Mrs. Higgins.

39. Blasphemy laws, most of which contained provisions such as the one on the causing of justified general or individual disapproval, were an anachronism.

40. Article 6 (1) of the Basic Law of 1867, quoted in paragraph 139 of the report, stated that every citizen had the right to establish his residence and his domicile anywhere in the territory of the State. He asked whether there were any restrictions to that right in law or in practice. Moreover, did the addition of the words "and his domicile" to the word "residence" have any particular meaning or were they merely tautological?

41. On the question of search warrants, referred to in paragraph 173, he had the impression that when a warrant for arrest was issued and was executed

either by the police or the security authorities, a search would be superfluous. If a person was not suspected of having committed an offence, no warrant should have been issued.

42. Mr. WENNERGREN drew attention to the legislation with respect to conscientious objectors. There had been a case under the Optional Protocol in connection with similar legislation in Finland, in which the term of alternative service had been extended, when the procedure for the examination of conscientious objectors had been abandoned, in order to prevent abuse. Several members of the Committee had expressed the view that genuine objectors were thus being discriminated against merely because of administrative factors. That case might be of interest to Austria in considering its new legislation. He asked how Jehovah's Witnesses were dealt with, bearing in mind that they objected to any kind of alternative service. Finland, the Netherlands and Sweden had exempted them from such service because of the overpopulation of prisons which they had caused. It had been suggested that such exemption discriminated against other conscientious objectors and that all of them should be treated alike.

43. A case against Austria (Chorrherr v. Austria), in which a protester had been arrested, detained and subsequently convicted for disturbing public order by refusing to cease distributing leaflets and exhibiting posters at a military parade, was pending in the European Court. The Constitutional Court had dismissed the protester's appeals as unfounded on the ground that the police had not intended to interfere with his right to freedom of expression but had taken measures only in order to secure public order. It would have been more appropriate to ask about the protester's intentions rather than those of the police. The Constitutional Court judgement in that case had been rendered prior to the judgement of the European Court of Human Rights in the Lingens case. The Austrian delegation had informed the Committee that following the latter case, the Government had issued a decree calling upon the Austrian courts to be less restrictive with regard to freedom of expression. He asked whether that decree was expressed in terms that might be helpful in the Chorrherr v. Austria case. To place public order before freedom of expression, as had been done in that case, was incompatible with the provisions of the Covenant.

44. On the question of the right to seek information, the Austrian delegation had stated that the authorities provided information that was in their hands. However, information could be provided either by making a summary of the contents of a file or by allowing the person in question access to the file itself. Which of those means had been used in Austria in order to comply with the right to seek information?

45. Mr. FODOR asked whether any statistical data were available on the number of people who had applied for refugee status or temporary shelter in Austria after fleeing from the war in Yugoslavia. What measures had the Austrian Government taken to meet their needs and what future policy was envisaged with respect to them? Would all applications be granted or would quotas be established if their number increased?

46. Mr. SADI noted that article 14 of the Basic Law, quoted in paragraph 189 of the report, stated that no person could be compelled to take part in

religious activities or to attend a religious ceremony except in so far as he was subject to the authority of another person duly authorized by law. He asked who the person duly authorized by law would be. Would it, for example, be the parents of a child or juvenile?

47. Article 188 of the Criminal Code, quoted in paragraph 196, stated that anyone who publicly discredited a person or object worshipped by a church or religious community recognized in Austria would be liable to a prison term. Since he did not know which churches or religious communities were recognized in Austria and which were not, he would appreciate some further information on the subject.

48. On the question of freedom of the press, he had become the chief editor of a newspaper at a time when his Government had controlled freedom of the press and had exercised censorship. The newspaper had later been privatized, but censorship had continued in another form. Private ownership was not always a guarantee of objective reporting. Owners and managers could have an editorial policy for controlling the information they disseminated. Freedom of the press should be used to ensure objective reporting and not merely for its own sake, but that was frequently not the case. He asked what policy guidelines were followed in Austria to ensure such objective reporting. According to what criteria were the subsidies described in the report granted to the press and what was the selection mechanism?

49. Mr. MIKLAU (Austria) said that the radio and television monopoly was not a State monopoly but a separate broadcasting authority with a legal personality. It had been founded by the Federation and the nine Länder. For a small country like Austria, it would have been uneconomical to run a large number of separate broadcasting stations. Moreover, it had been feared that to establish a number of private broadcasting stations might ultimately lead to a private monopoly. Accordingly, it had been decided as a compromise to establish a separate body which, by a special Constitutional Act, had been declared independent, but which had an obligation to broadcast objectively both by radio and television, and some control had been necessary for that purpose. There was an internal control in the broadcasting authority itself in the form of a statute which offered newscasters the freedom to collect and broadcast information.

50. There was also a commission composed of judges and others which had the task of controlling the objectivity of radio and television broadcasts. Anybody could complain to that commission if they found a broadcast to be lacking in objectivity. The system had been set up 20 years earlier and there had been many cases in which the commission had intervened and in which broadcasters had been obliged to make a public announcement regarding the decision which that body had taken in the case. Furthermore, whatever the broadcasting commission might decide regarding the objectivity of a broadcast, there remained the possibility of appeal to the Constitutional Court. The Austrian authorities had therefore tried to harmonize contrary objectives. On the one hand there was a monopoly of broadcasting but on the other hand the authorities were well aware of the dangers of such a monopoly and had therefore deemed it necessary to develop a system of effective control of the objectivity of the information provided by the monopoly. There were currently three cases before the Strasbourg organs on the issue of broadcasting

monopoly. It was, however, the view of the Austrian authorities that, bearing in mind the fact that there were three levels of control, namely an internal control and two external controls, not to mention a very sensitive public, was such a monopoly in conformity with the European Convention and the International Covenant. There was no programme control by the Government.

51. In connection with the Chorrherr case, the issue was one of interpretation and opinion. In such a situation it would have been possible for the police authorities to wait and see whether trouble developed, with all the attendant risks of such a course, instead of deciding immediately that there was a danger in permitting people to hand out pamphlets and act accordingly. The police's judgement in that case had been recognized as correct by the Constitutional Court.

52. On the question of blasphemy, he pointed out that about 90 per cent of the Austrian population belonged to the Roman Catholic religion and in certain Länder the Roman Catholic religion was taken very seriously indeed. One recent blasphemy case had occurred in the Tyrol, where people were fervent believers in the Catholic faith.

53. Mr. Wennergren had asked how files were made available to people requesting information. Decisions on individual cases were based on what was regarded as the most adequate form of providing the information requested. Information in a file belonging to a proceeding affecting several parties would not be made available to an outsider because the interests of the parties to the proceeding might be damaged by such disclosure. In many cases, however, people requesting information would be permitted to have access to the appropriate file. The decision would depend on the circumstances in each case.

54. On the question of asylum, refugees crossing the border were not always political refugees. Austrian policy was that political refugees were given asylum under all circumstances. However, refugees coming for other reasons, particularly economic, could not be given asylum without further investigation of their claims. Currently the Government was trying to work out an adequate policy regarding refugees in the latter category.

55. Mr. Sadi had requested elucidation of the situation of persons having authority over others. The relationship concerned was of course that between parent and child. Children up to the age of 14 were, so far as religion was concerned, under the authority of their parents. When they reached the age of 14 they could decide for themselves which religion, if any, they would adhere to.

56. Mr. MIKLAU (Austria) said that he would like to supplement some of the comments which had been made.

57. In connection with the monopoly situation in the mass media, the Government was currently redrafting the anti-monopoly and anti-trust laws in general. The new draft law would have a special section relating to the media which would apply the same general principles but with additions which would take into account the special requirements of plurality of information in the media field. It was hoped that the draft bill would be available by the end

of 1991. There were special problems involved in the Austrian media market, a high proportion of which was currently in the hands of one large company. The question therefore was how far new provisions on anti-monopoly could have retroactive effect. In principle that was impossible for constitutional reasons. He was not sure whether in other countries such laws had been put into effect retroactively. The situation was different in, for example, the United States, where there was a tradition of anti-trust legislation and, if a certain company obtained ownership above a certain percentage, it could eventually be dissolved. The Minister of Justice would be holding hearings on the issue with leading experts in Austria and other European countries in the next few weeks and the result would be incorporated in the proposed draft law. A special problem would arise if it should prove impossible to apply the new law with retroactive effect because of constitutional or other reasons. The question which would then arise would be how the small media entrepreneurs could be subjected to such provisions when already one large company had a disproportionate share of the market; the rights of those small companies, which were already at a disadvantage, would thus be further restricted.

58. In connection with article 111 of the Criminal Code, it had been asked whether the decree issued to judges and prosecutors on the substance of decisions of the European Court had made any reference to the problem of public order in relation to freedom of expression. The answer was in the negative because the context was different. Violations of public order were not a criminal offence in Austria but an administrative offence. Judges and prosecutors were not therefore dealing with questions of public order in the context concerned. Consequently, the decree did not contain any passages on that problem.

59. Mrs. Higgins had asked why Austria did not amend article 111 of the Criminal Code. In reply he would like to say that it was not the law that was wrong but its interpretation, which had been changed in the light of the decision of the European Court. There was therefore no present need to change the law and he hoped that courts would continue to interpret article 111 in the light of jurisprudence taken over by the courts of appeal.

60. The comparison made by Mrs. Higgins with the provisions in Marxist constitutions was not to the point in so far as Marxist constitutions and Marxist criminal laws applied in cases where public prosecutions took place. Article 111 of Austria's Criminal Code was essentially a mechanism to defend the reputation of private individuals by means of private prosecution. The only exception to private prosecution would be the case of offence to a public official. In such a case, the public prosecutor would take proceedings in the matter. The context would nevertheless be one of private prosecution and the public prosecutor in fact would be acting as the injured party's lawyer.

61. Mr. Wennergren had inquired what the practice was in regard to Jehovah's Witnesses on the issue of military service. The problem had not been dealt with in legislation but a solution had been found in practice, based on the legal provision that the military authorities could dismiss people from military service who were unfit for such service.

62. He shared the view of Mr. Mavrommatis that the provisions contained in article 188 of the Criminal Code regarding blasphemy were obsolete. However,

those provisions were designed to defend public order and tolerance between different religions and other groups. The wording of article 188 of the Criminal Code as quoted in paragraph 196 of the report was incorrect in that the word "recognized" in the second line should read "existing" in Austria. Official legal recognition was not a prerequisite for being protected under that provision. The only condition was that the church or group should exist in Austria. There was a procedure for the legal recognition of churches and religious groups in Austria but that applied only in connection with the provision of subsidies. In the same quotation the phrase "belief, custom or institution recognized by law" was misleading as in fact the provision was intended to cover a belief, custom or institution which was "not unlawful". An expression of opinion on religious matters was not a criminal matter. Article 188 would however come into play in the case of public behaviour which caused justified annoyance and serious irritation to members of a particular religious group. The offence would lie, not in the substance of the remark but in the way in which it was expressed in public.

63. In reply to a point raised by Mrs. Higgins, the Austrian authorities considered that article 19 (3) of the Covenant provided a legal basis for certain limitations on freedom of expression in that it permitted certain restrictions so long as they were stipulated by law and were necessary for respect of the rights or reputations of others and for the protection of national security or of public order or of public health or morals. In that connection, Mrs. Higgins appeared to have interpreted the "rights of others" to mean the human rights of others. He did not share that view; reputation, for example, was not considered to be a human right. There was also a special provision for freedom of the arts in Austrian legislation and under it The Satanic Verses, for example, would be protected. In the Lingens case, the European Court of Human Rights had ruled that a distinction must be drawn between the substance of information and opinions which might be shocking and offensive and the form in which such information or opinion was expressed.

64. Mr. SZYMANSKI (Austria), replying to Mr. Prado Vallejo, said that the Convention relating to the Status of Refugees was applied in Austria and accordingly each refugee was welcome in Austria if coming directly from the country in which persecution had taken place. If, however, the refugee had passed through a country where his security was guaranteed, he would not be granted asylum but would be sent back to the latter country. If a person entered Austria as an apparent refugee he would either be recognized as a refugee or turned back to the country from which he had come.

65. Mr. Fodor had inquired about Austria's policy regarding Yugoslav refugees. The situation was that many refugees had entered Austria from Slovenia but had not requested asylum as they had been able to stay in Austria thanks to support from relatives. Only a few requests for refugee status had been received, and they had been granted. Yugoslav citizens from Croatia were also granted asylum if they requested it but most in fact had remained in Croatia. If a mass migratory movement were to occur, international action would be required.

66. Mr. BERCHTOLD (Austria), replying to the questions by Mr. Ando and Mr. Sadi regarding the financial subsidies given by the Austrian Government to newspapers, said he was not acquainted with the guidelines on the issue. The

Government, however, had no influence on the editorial policy of those papers. The money was given to support the papers because the Government felt that it was important that there should be a diversity of media for the people.

67. In reply to Mr. Mavrommatis' question regarding freedom of movement, he said nationals could move freely within the country.

68. He did not think that the equivalent of Speakers' Corner was likely to come into being in Austria. The restrictions on foreigners with regard to the holding of meetings which were mentioned in paragraph 221 of the report applied only to the case of interference in public affairs. It should be noted in that connection that article 16 of the European Convention also permitted certain restrictions on foreigners and that Austrian neutrality made such interference a particularly sensitive matter.

69. Mr. SADI asked how the answer to the question regarding The Satanic Verses could be reconciled with article 188 of the Criminal Code in that the book discredited the Prophet.

70. Mr. MIKLAU (Austria) said that article 188 of the Criminal Code had to be interpreted in the light of the freedom of the arts. The Satanic Verses was freely on sale in Austrian bookshops and nobody had thought of instituting criminal proceedings because of the book's publication.

IX. Rights of persons belonging to minorities (art. 27)

(a) What factors and difficulties, if any, exist with respect to the implementation and enjoyment of the rights under article 27 of the Covenant?

(b) Please provide information on the composition, functions and activities of the Ethnic Group Advisory Councils mentioned in paragraph 264 of the report.

(c) What is the percentage of persons belonging to minorities in public office?

71. Mr. BERCHTOLD (Austria) said the section of the report dealing with the rights of minorities had been somewhat short because it had been hoped to annex to it a recent government report on ethnic minorities, which included the views of the minorities themselves. Unfortunately, an English version of that lengthy but very interesting report had not been prepared in time for submission to the Committee, but it would be made available in due course. Austria experienced no such difficulties as those referred to in question IX (a) since the provisions of the State Treaty of 1955 went well beyond those of article 27. Because 90 per cent of Austrian citizens were Roman Catholic, religious minorities formed only a small proportion of the population; although they did not make a great impact on the religious life of the country, they encountered no restrictions in the profession and practice of their own religion.

72. The Ethnic Group Advisory Councils mentioned in question IX (b) were described in a separate reference document before the Committee. Provision

had been made to establish such advisory councils within the Federal Chancellery for the purpose of advising the Federal Government and its ministers in matters concerning ethnic groups. Their function was to safeguard and represent the overall cultural, social and economic interests of the ethnic group with which they were concerned; they were involved in the drafting of any legal instruments with a bearing on that group and were empowered to make proposals for the improvement of its situation. The advisory councils had the same position, functions and competence with regard to the governments of the Länder. Four groups of ethnic minorities lived in Austria. There were Slovenes in South Carinthia, Croatians and Hungarians in Burgenland and Czechs in Vienna. Those ethnic minorities were recognized by the Austrian Government, which wished an ethnic group advisory council to be established for each. Advisory councils were in place for the Hungarian and Slovene minorities but difficulties had been experienced in the case of the Croatian and Czech groups, which had not managed to agree on the manner in which they wished to be represented. It was, however, hoped that eventually all four advisory councils would be in operation. The financial subsidies for ethnic minorities, which also involved the advisory councils, were being substantially increased; nearly 23 million schillings had been spent in such subsidies during the period 1987-1989.

73. It had not been possible to determine the percentage of persons belonging to minorities in public office (question IX (c)) as they were difficult to identify. An extremely large number of Austrian citizens had family names of non-Austrian ethnic origin but the vast majority of them considered themselves simply as Austrian citizens. Only those who claimed affiliation with a given ethnic group were considered to belong to that group, and they were numerically small in relation to the total population of the country.

74. The CHAIRMAN invited the members of the Committee to make their concluding observations.

75. Mr. SADI said the responses provided by the Austrian delegation to the Committee's questions had been very straightforward, honest and direct. Where there were any faults and shortcomings, they had been frankly acknowledged. The dialogue had been of the sort that the Committee always looked for in its exchange of views with States parties.

76. He continued to feel concerned, however, about the list of reservations Austria maintained to the Covenant and hoped the Austrian Government would consider reducing their number, if it could not withdraw them all. A further concern was the status of the Covenant in relation to Austrian law, particularly in view of the differences between the Covenant and the European Convention on Human Rights, which had been made part of Austrian law as early as 1964.

77. Mr. PRADO VALLEJO expressed satisfaction at the very positive and constructive dialogue that had taken place between the Committee and the Austrian delegation. He had, however, a number of points which he would like the Austrian delegation to submit to its Government's consideration.

78. There was a need for proper investigation of cases of alleged torture. Furthermore, according to information in his possession, the police frequently

overstepped their authority by using threats to dissuade victims from complaining of ill-treatment. He was concerned, too, that administrative courts were composed solely of civil servants, which in his view was not a sufficient guarantee that cases before such courts would be treated with the necessary impartiality. He, like other Committee members, felt that the list of Austrian reservations to the Covenant was excessive and that their wording often constituted a distortion of articles of the Covenant. Another concern was the State monopoly of radio and television, which to some extent prejudiced and undermined one of the guarantees of freedom of expression.

79. Mr. WENNERGREN thanked the Austrian delegation for its contribution to a fruitful, constructive and enlightening dialogue. It was clear that the legal system and practices in Austria were of a very high standard and promoted and safeguarded human rights.

80. He was concerned by the allegations of ill-treatment by police officers. He believed, however, that Austria would find a way to solve the problem and eradicate such ugly practices from the police force. With regard to freedom of expression, it was unacceptable that a person should be found guilty by the courts of a disturbance of public order when his act had merely been to distribute pamphlets in order to impart information, a right protected by article 19 of the Covenant. In distributing pamphlets, a person's intent was not to create a disturbance but to impart information, although it was true that in such circumstances disturbances sometimes occurred, in which case the police was entitled to interfere. However, the distribution of pamphlets by itself could not be considered an offence against public order. A person should be able to enjoy the freedom to impart information and ideas of all kinds without being arrested for so doing. He therefore hoped that Austria would be able to review the relevant legislation and court practices to ensure that freedom of expression was fully respected.

81. Mr. FODOR said the Committee's dialogue with the Austrian delegation had been extremely fruitful. One reason was that Austria had a long tradition of respect for fundamental rights and freedoms both within and outside its borders. Non-governmental organizations concerned with human rights were able to pursue their activities there without hindrance. Furthermore, Austria had always played an active and at times a leading role in international standard-setting in human rights and had over many decades encouraged Eastern European countries in the fight against human rights violations. Another was that the Austrian Government had provided a well-prepared, comprehensive and generally excellent report. Lastly, the high calibre of the Austrian delegation and the great expertise and dedication its members had brought to the task had been a key factor in the success of the debate.

82. He would address only one of the minor concerns raised during consideration of the report, the many old laws still in force in Austria. Although the fact that laws enacted a century previously were still in force was evidence of the care with which they had been drafted and the absence of major alteration to the legal system, nevertheless some changes must have occurred, both at the domestic and the international level. Even though those changes might be duly reflected by the adoption of amendments, after a law had been in force for a very long period its replacement should be considered. The replacement of old laws on fundamental rights by new ones would surely

facilitate the application of such provisions for the authorities, the courts and individuals, even in a country where long-standing legal texts were accorded great respect.

83. Mrs. HIGGINS said the exchange of views with the Austrian delegation had been extremely satisfactory and informative. She commended both the report and the replies given.

84. She noted that discrimination in respect of any legal right or obligation on grounds of race was prohibited in Austria by virtue of the Constitutional Act ratifying the International Convention on the Elimination of All Forms of Racial Discrimination. However, discrimination in respect of any legal right or obligation on grounds of citizenship or any ground other than race was not covered by Austrian law, since no provision on the matter was to be found in the Constitution or the European Convention on Human Rights, which had the status of domestic law. Perhaps some consideration could be given to the possibility of introducing at least articles 26 and 27 of the Covenant, which were not reflected in the European Convention on Human Rights, into domestic law in some appropriate form.

85. Although she was satisfied with the delegation's reponses to questions about allegations of maltreatment and the attitude of the Government in dealing with that problem, she considered that articles 7 and 9 of the Covenant required an entitlement to a lawyer at the interrogation stage. She hoped serious consideration would be given to providing immediate relief to the problem by the use of tapes and videos. That might not yet be standard procedure in democratic countries, but it would be useful in the short term until the comprehensive reform of the Criminal Code was complete.

86. The contention that the "rights of others" referred to in article 19 (3) of the Covenant were not human rights but some other form of rights was surely incorrect, since that would permit any State to provide a right under national law that would place a limitation on a right enshrined in the Covenant. Rights in the Covenant that permitted limitations to human rights were necessarily human rights themselves. Nor could it be argued that reputation was not a human right, when it was precisely provided for in article 17.

87. She accepted that the interpretation given to article 111 of the Criminal Code was crucial, but asked whether the problem could not be solved more simply by amending that article. Surely it was an avoidance of the issue to claim that actions under article 111, even if brought by the State, were in the nature of private prosecutions. The reality was that the law, however formulated, permitted restrictions on speech, in protection of public officials, that were broader than those commonly found in contemporary democracies.

88. At present Western Europe appeared unfortunately to be seized by a relatively generalized xenophobia and a disturbingly specific rise in anti-Semitism. It was possible to speculate on the reasons for that malaise, but it was critical both for the protection of national and religious minorities and for the general health of the international community that States and Governments should give a lead on such matters. Austria would

appear to be in a position, for historical and geographical reasons, to play a special role in that area and was, she was persuaded, keeping such matters under close scrutiny and taking every possible containment action.

89. While understanding the reservation Austria had entered to the Optional Protocol, since many States were also reluctant to have a case taken twice through two different systems, she concurred with the Chairman that its Government would no doubt take the larger issue of reservations to the Covenant into careful consideration.

90. Mr. EL SHAFEI expressed his appreciation for the Austrian delegation's contribution to what had been an instructive and useful dialogue. Despite the constitutional and legal guarantees against torture and ill-treatment in Austria, there were continuing allegations that persons in police custody or within the physical control of police officers were sometimes subjected to unwarranted physical violence. Concern had also been expressed with regard to the procedures available for making complaints against the police, the supervision of criminal investigation procedures and the treatment by those responsible for the administration of evidence allegedly obtained through ill-treatment. He concurred with those members of the Committee who believed that reforms were necessary in all those areas.

91. The delegation of Austria had explained the reasons for its reservation to the Optional Protocol, but he felt that reservation was unacceptable as long as there remained a number of fundamental freedoms and rights enshrined in the Covenant that were not provided for by the European Convention on Human Rights. The report and the responses of the Austrian delegation showed that the Austrian authorities were anxious to cooperate with the bodies responsible for monitoring international human rights instruments. The Austrian authorities might therefore wish to reconsider their position with respect to that reservation, as also their many reservations to articles of the Covenant.

92. The CHAIRMAN said he wished to convey the thanks of the members of the Committee to the Austrian delegation for its responses to their questions on an excellent report. On behalf of the Committee, he requested the delegation to convey the Committee's concluding observations to the competent authorities.

93. Mr. BERCHTOLD (Austria) thanked the Committee for the warm welcome it had accorded to his delegation, which had found the questions and dialogue extremely interesting.

94. The CHAIRMAN said that the Committee had concluded its consideration of the second periodic report of Austria.

The meeting rose at 1.05 p.m.